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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/907,373	07/17/2001	Akira Mizumura	09792909-5096	6501

26263                      7590                      11/18/2003  
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EXAMINER

NGUYEN, KHIEM D

ART UNIT                      PAPER NUMBER

2823

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/907,373	<b>Applicant(s)</b> MIZUMURA, AKIRA	
	<b>Examiner</b> Khiem D Nguyen	<b>Art Unit</b> 2823	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 04 August 2003.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1 and 2 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 17 July 2001 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a)  All    b)  Some \*    c)  None of:
- 1)  Certified copies of the priority documents have been received.
- 2)  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3)  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Response to Amendment***

***Response to Applicant's Arguments***

Applicant's arguments filed 08/04/2003 have been fully considered but they are not persuasive.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Miyasaka (U.S. Patent 6,124,154).

**Miyasaka** discloses a method of producing a semiconductor device, the method comprising the step of (See col. 31, line 15 to col. 32, line 49 and **FIGS. 17A-18G**):

dry etching an upper layer pattern (**FIG. 18A, 22**) formed on an insulating film (**FIGS. 18A-G, 13**) such that at least a part of the insulating film, which is formed above an element separation (**FIGS. 18A-G, 11**) and a substrate (**FIGS. 18 A-G, 10**) is exposed (col. 32, lines 27-44) wherein the insulating film is formed by a chemical vapor deposition method (col. 31, lines 53-61); and

after the dry etching, exposing a surface of the insulating film to a same film formation atmosphere as used to form the insulating film prior to forming additional layers (**FIGS. 18D-G, 14, 21**) upon the insulating film (col. 32, lines 46-62);

***Response to Amendment***

***Response to Applicant's Arguments***

Applicant's arguments filed 08/04/2003 have been fully considered but they are not persuasive.

In response to Applicant's argument that nowhere does **Miyasaka** disclose or even suggest exposing its insulating layer 13 to a same atmosphere as used to form the insulating layer 13 after dry etching, examiner respectfully disagree, Applicant is directed to (col. 32, lines 27-62 and **FIGS. 18A-G**), the step of, "after the dry etching, exposing a surface of the insulating film to a same film formation atmosphere as used to form the insulating film prior to forming additional layers upon the insulating film" is disclosed. Therefore, Applicant's argument is moot and the rejection is considered proper .

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

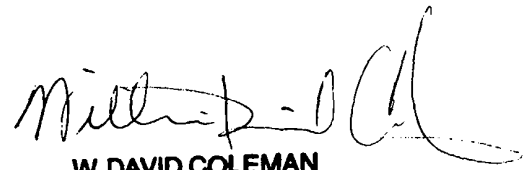
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khiem D Nguyen whose telephone number is (703) 306-0210. The examiner can normally be reached on Monday-Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on (703) 306-2794. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-9179 for regular communications and (703) 746-9179 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

K.N.  
November 13, 2003

  
**W. DAVID COLEMAN  
PRIMARY EXAMINER**